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COMMISSION
ON ETHICS

NEVADA COMMISSION ON ETHICS
REQUEST FOR OPINION
(ETHICS COMPLAINT)
NRS 281A.440.2

Please print or complete online.

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| Nevada Commission on Ethics REQUEST FOR OPINION No. <i>08-37C</i> |
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1. Provide the name, title, public agency, address, and telephone number for the public officer or employee you allege violated the Nevada Ethics in Government Law, NRS 281A. *(If more than one public officer or employee is alleged to have violated the law, use a separate form for each individual.)*

| | | | |
|-------------------|--|------------|----------------|
| Name & Title: | Mr. Jim Gibbons, Governor of the State of Nevada | | |
| Public Agency: | State of Nevada | | |
| Address: | State Capitol, 101 N. Carson Street, | | |
| City, State, Zip: | Carson City, Nevada 89701 | Telephone: | (775) 684-5670 |

2. Describe in specific detail the conduct of the public officer or employee identified above that you allege violated the provision(s) of chapter 281A of NRS. *(You must include specific facts and circumstances to support your allegations – including dates, times, places, and the name and position of each person involved.)*

Check here ☒ if additional pages are attached.

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| (Please see attached pages.) |
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3. Identify all persons who might have knowledge of the facts and circumstances you have described, *as well as* the nature of the testimony the person will provide. Include the address and telephone number for each person.

Check here ☒ if additional pages are attached.

| | | | |
|----------------------|---|------------|----------------|
| Name & Title: | Mr. Joe Aguirre, Elko County Assessor | | |
| Address: | Elko County Assessor's Office, 571 Idaho Street | Telephone: | (775) 738-5217 |
| City, State, Zip: | Elko, Nevada 89801 | | |
| Nature of Testimony: | Firsthand knowledge regarding Mr. Gibbon's improper use of his position, and improper use of a subordinate's position, to secure the unwarranted tax reduction. | | |

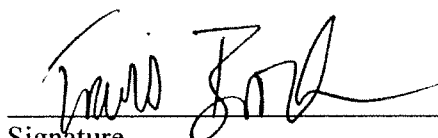
4. Attach two copies of all documents or items you believe provide credible evidence to support your allegations. NRS 281A.440.2(b)(1) requires you to submit all related evidence to support your allegations. NAC 281.194.3 defines credible evidence as a minimal level of any reliable and competent form of proof provided by witnesses, records, documents, exhibits, minutes, agendas, videotapes, photographs, concrete objects, or other similar items that would reasonably support the allegations made within the complaint. Credible evidence does not include a newspaper article or other media report if the article or report is offered by itself.

State the total number of additional pages attached (including evidence) 34 + 2 items

REQUESTOR'S INFORMATION:

| | |
|--|---------------------------|
| NAME: Travis Brock | E-MAIL: tbrock@nvdems.com |
| ADDRESS: 1210 S. Valley View Road, Suite 114 | |
| CITY, STATE, ZIP: Las Vegas, Nevada 89102 | |
| TELEPHONE (702) 737-8683 | CELL PHONE: |

By my signature below, I do affirm that the facts set forth in the foregoing complaint and attachments thereto are true and correct to the best of my knowledge and belief and I am willing to provide sworn testimony if necessary regarding these allegations.



Signature
Print Name: Travis Brock

7/18/2008
Date

Please return an original signed form and two copies of the form and three copies of the supporting documents and evidence to:

**Executive Director
Nevada Commission on Ethics
3476 Executive Pointe Way, Suite 10
Carson City, Nevada 89706**

Ethics complaints submitted by facsimile will not be considered as properly filed with the Commission.
NAC 281.097.3

2 (cont.). *Describe in specific detail the conduct of the public officer or employee identified above that you allege violated the provision(s) of chapter 281A of NRS. (You must include specific facts and circumstances to support your allegations – including dates, times, places, and the name and position of each person involved.)*

The tawdry facts of this episode have been widely publicized already in media reports. The Hon. Jim Gibbons, Governor of the State of Nevada, sought to use his authority and position—as well as the position of a subordinate and gubernatorial appointee—to gain an unwarranted tax break on land he owns with his wife in Elko County, and to secure for himself a tax advantage that is meant to protect and encourage Nevada farming families. I seek this panel's opinions on the impropriety of the Governor's actions.

Mr. Gibbons first approached the Assessor of Elko County, Joe Aguirre, in person to approve an agricultural use assessment for which his property did not qualify and, when informed of such by the Assessor, then proceeded to dispatch an attorney who happens to be a member of the State Tax Commission (the only state body with power over assessors' offices), John Marvel, to press his case with Mr. Aguirre and to provide misleading and inappropriate "evidence" to support the bogus application for the agricultural use assessment.

In pursuing this course of conduct himself, and then through his agent Mr. Marvel, Mr. Gibbons has violated NRS 281A.400(2)'s prohibition of the use by a public official of his position to secure unwarranted privileges, preferences, exemptions, or advantages for himself or any business entity in which he has a significant pecuniary interest. Furthermore, because his carefully-chosen agent was a gubernatorial appointee serving on the Tax Commission, Mr. Gibbons has violated NRS 281A.400(9)'s prohibition of any attempt to benefit his personal or financial interest through the influence of a subordinate.

To be clear: Mr. Gibbons, in order to gain a few thousand dollars in tax breaks—which the legislators of this state have determined are appropriate for Nevada ranchers and farmers to supplement and encourage their livelihoods—pressured and prevailed upon a longtime public servant who sought only to apply the laws of this state fairly and accurately. This is both unethical and unbecoming of the highest executive officer of the state.

I attach here at **Exhibit 1** a series of media reports and video and audio recordings that support the facts gathered below. I am aware that NRS Chapter 281A requires further documentation beyond media reports, and I offer as much documentary evidence as is currently available. Clearly, the statements of Mr. Aguirre support and supplement the documentary record in this matter, and the Commission can judge for itself the obvious credibility and integrity of his comments and demeanor in the various media interviews included here as exhibits.

Nevada law provides for assessment of real property at reduced taxation rates, if the property is put to "agricultural use" and meets certain other criteria. NRS 361A.030 states:

1. "Agricultural use" means the current employment of real property as a business venture for profit, which business produced a minimum gross income of \$5,000 from agricultural pursuits during the immediately preceding calendar year by:

- (a) Raising, harvesting and selling crops, fruit, flowers, timber and other products of the soil;
- (b) Feeding, breeding, management and sale of livestock, poultry, or the produce thereof, if the real property used therefore is owned or leased by the operator and is of sufficient size and capacity to produce more than one-half of the feed required during that year for the agricultural pursuit;
- (c) Operating a feed lot consisting of at least 50 head of cattle or an equivalent number of animal units of sheep or hogs, for the production of food;
- (d) Raising furbearing animals or bees;
- (e) Dairying and the sale of dairy products; or
- (f) Any other use determined by the Department to constitute agricultural use if such use is verified by the Department.

It is established through public records that Mr. Gibbons and his wife Dawn T. Gibbons, as Trustees for Gibbons Family 1989 Trust Dated August 21, 1989, purchased the property in question on or about August 2, 2007, from Mr. Jerry Carr Whitehead. (See Grant, Bargain and Sale Deed, Legal Description, State of Nevada Declaration of Value, and Sales Data, attached here at **Exhibit 2**.) The purchase price, according to the records, was \$575,000.

Thereafter, during the fall of 2007, Mr. Gibbons himself visited Elko County Assessor Joe Aguirre to discuss getting an agricultural use assessment applied to the newly-purchased property. Mr. Aguirre reports that he informed Mr. Gibbons that the property would not qualify for the tax break.

Mr. Gibbons' property had been part of a much larger parcel, but after purchase by Mr. Gibbons the property would have to qualify on its own, under the terms of NRS Chapter 361A, for agricultural use assessment. In order to qualify, Mr. Gibbons' property (which he claims is utilized for grazing of livestock and pasturing) would have to generate at least \$5,000 minimum gross income from grazing or other agricultural activity, and would have to be large enough to produce half of the feed necessary to support the cattle grazing there.¹ Mr. Gibbons' property is approximately 40 acres in size. (See **Exhibit 2**, Sales Data.)

Mr. Aguirre doubted that Mr. Gibbons' property could even come close to qualifying for an agricultural use assessment because of the practical impossibility that

¹ Grazing loads and requirements are often expressed in "Animal Unit Months," or "AUMs." An AUM is the amount of forage required by a livestock animal for one month. An average cow, for example, has an AUM of about 800, meaning it requires 800 pounds of forage (feed) every month.

such a small parcel could support enough cattle and produce enough feed to generate either the \$5,000 income at current grazing rates or the necessary pounds of forage per month per animal necessary to qualify for the tax break. The math makes it frankly impossible. Mr. Aguirre told him so very clearly, as he has noted in a number of interviews.

Thereafter, in October of 2007, Mr. John Marvel, northern Nevada attorney and member of the Nevada State Tax Commission, (Tax Commission member since 1990, re-appointed most recently by Gov. Kenny Guinn in 2005) sent an "Application for Agricultural Use Assessment" on behalf of Mr. and Mrs. Gibbons to the Elko County Assessor. (See Application, here at **Exhibit 3**.) On the Application, Mr. Gibbons' agent, Mr. Marvel, certifies that "the gross income from agricultural use of the land during the preceding calendar year was \$5,000 or more." (emphasis added) The Application clearly requires, however, that anyone certifying such an income level from agricultural must attach proof of that income to the Application. Furthermore, Mr. Marvel and Mr. Gibbons tried to skirt the problems created by the detachment of the parcel from Mr. Whitehead's larger property by noting on the Application that the property "has historically been in agricultural use." (See Exhibit 3.) The property purchased by Mr. Gibbons had never, of course, been assessed on its own under agricultural use standards.

Mr. Marvel did not include any proof of agricultural income at all with the Application. Instead, Mr. Marvel provided a cover letter to Mr. Aguirre stating flatly, without any proof or supporting documentation, that the Gibbonses "intend to continue to use the subject property for agricultural purposes and will be generating in excess of \$5,000.00 of gross income per year from agricultural uses," as if the Application—or NRS 361A—had asked about Mr. Marvel or Mr. Gibbons' wishful projections regarding the income they expected the property to generate. (See Letter of John E. Marvel to Joe Aguirre, October 23, 2007, here at **Exhibit 4**.) Mr. Gibbons apparently expected that the assessor was supposed to just trust him on that and give him a prospective approval, while any other applicant for agricultural assessment would have to demonstrate current eligibility for the tax break.

Mr. Aguirre responded the very next day by letter to Mr. Marvel, telling him that Mr. Gibbons' Application lacked supporting documentation and that Mr. Gibbons also had to show that the parcel he purchased, on its own, meets the requirements of NRS 361A for agricultural use assessment. (See Letter of Joe Aguirre to John Marvel, October 24, 2008, here at **Exhibit 5**.) "As submitted," wrote Mr. Aguirre to Mr. Marvel, "it does not meet the qualifications for approval." (See Exhibit 5)

Two months later, Mr. Marvel wrote back to Mr. Aguirre, offering copies of two checks from Mr. Whitehead to Mr. Gibbons. (See Letter of John E. Marvel to Joe Aguirre, December 26, 2007, and Copies of Checks, here at **Exhibit 6**.) The purpose of the correspondence, Mr. Marvel wrote, was for "verification of annual gross income received by the Gibbons Family Trust for agricultural purposes" and "to substantiate [the property's] qualification for the entitlement to an agricultural use assessment." (See Exhibit 6).

The letter, and the checks, of course, verify and substantiate no such thing. The checks are not cancelled nor have any indication they were actually cashed, meaning they offer no "proof of income" as required by the Application. Neither do the checks mention or indicate that they are directed to the "Gibbons Family Trust" for grazing lease payments on the particular property. Furthermore, they are dubious in that there is no possible way that the amount of the payments, which if Mr. Gibbons' representations are to be accepted as true account for grazing lease payments from the time he bought the property in August through the end of the year (five months!), bear any relation to the current market for such leases on similar land in northern Nevada. Grazing leases on similar land garner, if lucky, about \$250 per year per cow. The property in question could—perhaps, at a stretch—produce enough for a few head of cattle. At the high end, therefore, Mr. Gibbons' property might generate approximately \$750 or \$1,000 in grazing lease income over a whole year. There is simply no way that this land, under current market conditions, could generate the more than \$5,000 of grazing income in five months that Mr. Marvel and Mr. Gibbons claim—that is, unless the market and the lease terms were manipulated to inflate the apparent income generated and get the agricultural use tax break.

Mr. Aguirre kept informing Mr. Gibbons and Mr. Marvel that the property did not qualify for the agricultural assessment; they kept coming back with more pressure and more "evidence." Mr. Aguirre has stated that, "They knew exactly what to give me for evidence to qualify this property." Mr. Gibbons and Mr. Marvel may have known what would be enough to make the Application look proper, but appearances are not enough. The highest executive officer in the land ought to have better ethical judgment, better political judgment, and better judgment about what is fair both for himself and for the ordinary Nevadans that comprise his constituency. To engage in a scheme whereby pressure on a public official is coupled with obviously questionable "evidence" should be beneath the dignity of Mr. Gibbons' office.

Mr. Aguirre has told various news outlets that he was confused and surprised that a member of the State Tax Commission would approach him in this manner regarding an assessment decision that was entirely within the county assessor's purview and discretion to apply the law regarding agricultural use assessments in a fair and appropriate manner. He felt, to say the least, pressured, both by Mr. Gibbons' initial visit and the follow-up correspondence with Mr. Marvel. The Tax Commission is the only state body with oversight and authority over his Assessor's Office, and he has said that he worried that the power of that commission would be brought to bear upon either him or his successor (Mr. Aguirre is slated for retirement in a short while.)

Mr. Aguirre has stated that he, quite rightly, "[F]elt like they backed me into a corner." Mr. Aguirre has said that he was left with a very bad set of options: "I guess my choices were to call him a liar or to let [the assessment] go through." That is a terrible position in which to place a county official, and the sort of conduct that NRS Chapter 281A is designed to prevent and sanction.

What did Mr. Gibbons gain through his conduct? The assessed value of his property, which he and his wife purchased for \$575,000, now stands at \$1,620. That is a reduction of more than 99.7%. As a result, Mr. Gibbons' tax bill on the property in question was recently issued as \$39.71, reduced by several thousand dollars. (See Secured Tax Inquiry Detail for Mr. Gibbons' Property, here at **Exhibit 7.**) Quite clearly, Mr. Gibbons did not anticipate Mr. Aguirre's decision that the property would now have to re-qualify each year for the agricultural use assessment, so the intended effect was a similar reduction in tax liability for the foreseeable future, perhaps in perpetuity.

The evidence shows that Mr. Gibbons used his position and authority, and that of his subordinate, to acquire a pecuniary benefit to which he was not entitled. As such, the proper remedy, under NRS 281A.480(1), is a civil penalty of \$10,000.00--\$5,000 for each of his violations of NRS Chapter 281A, as well as a civil penalty under NRS 281A.480(3) of twice the amount of pecuniary benefit realized by Mr. Gibbons through his unethical conduct—in other words, twice the difference between his proper tax liability and his bogus agriculture use assessment tax liability.

3 (cont.). *Identify all persons who might have knowledge of the facts and circumstances you have described, as well as the nature of the testimony the person will provide. Include the address and telephone number for each person.*

Mr. John Marvel, Esq.

Marvel & Kump, Ltd.
217 Idaho Street PO Box 2645
Elko , Nevada 89801
Tel: (775) 738-9881

Mr. Marvel is alleged to have communicated Mr. Gibbons' requests that Mr. Aguirre approve the unwarranted tax break for Mr. Gibbons' property. As a member of the State Tax Commission, Mr. Marvel is also the subordinate whose position and authority Mr. Gibbons misused in violation of state law.

Mr. Jerry Carr Whitehead, Esq.

Jerry Carr Whitehead Mediation Services
6121 Lakeside Drive, Suite 200
Reno , Nevada 89511
Tel: (775) 823-7700

Mr. Whitehead is the individual from whom Mr. Gibbons purchased the property in question, and to whom the property was leased back after purchase. Mr. Whitehead pays what is considered to be an inflated grazing lease fee to Mr. Gibbons, for the purpose of qualifying Mr. Gibbons' property for the unwarranted agricultural tax break. He has firsthand knowledge of the nature of the operations upon and income generated by the Gibbons property.

EXHIBIT 1

Print, Television, and Radio Reports and Interviews

A.

Las Vegas Review Journal, July 12, 2008: "Tax Liability Cut About \$5,000: Gibbons Tax Break Questioned"

B.

Las Vegas Sun, July 14, 2008: "Gibbons' Rural Tax Bill Posted: Amount Doubles"

C.

Las Vegas Sun, July 16, 2008: "Public Tax Break, Private Leak?"

D.

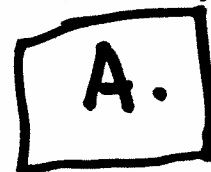
Las Vegas Sun, July 16, 2008: "Elko Embarrassment No. 3 May Be Coup de Grace"

E.

Video DVD: Jon Ralston's "Face to Face" Interview with Elko County Assessor Joe Aguirre, July 15, 2008

F.

Audio CD: KNPR "State of Nevada" Interview with Elko County Assessor Joe Aguirre, July 17, 2008



Jul. 12, 2008
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TAX LIABILITY CUT ABOUT \$5,000: Gibbons tax break questioned

County assessor felt pressured, 'uncomfortable'

By SANDRA CHEREB
THE ASSOCIATED PRESS

RENO -- Gov. Jim Gibbons asked for and received a property tax break on a vacant rural parcel he owns in Elko County that saved Nevada's chief executive thousands of dollars a year and left the county assessor feeling pressured.

Records show the first-term Republican governor lowered his annual property tax liability to \$15 from about \$5,000 on the 40 sagebrush-dotted acres he owns near Lamoille by getting it designated as agricultural land rather than residential.

Elko County Assessor Joe Aguirre, who said he first objected to the designation and then allowed the change to take effect after requests from the governor and an attorney who serves on the Nevada Tax Commission, said the process made him "feel uncomfortable."

"To say I was put in an awkward position I think is an understatement," Aguirre, a Republican, said.

Gibbons spokesman Ben Kieckhefer called any suggestion of intimidation or criticism of the cattle grazing deferral "ridiculous" and said the governor's property had been grazing land for years and still is.

He described the legal transaction as "regular" and said there was a lease agreement between the former owner and the governor showing it would be used for grazing.

"I don't think there's any question," Kieckhefer said.

"This land has been used for this purpose and had this exemption for as far as anyone can remember," he said. "There's no house on it. There's no power on it. There's cattle on it."

Nevada allows agricultural property tax breaks to help farmers and ranchers who eke out a living from the state's harsh landscape. In the early 1990s, the Legislature, concerned that people wealthy enough to buy elbow room were taking advantage of the agricultural deferment, raised the annual farming income threshold on tax-deferred land to require they take in at least \$5,000 from agricultural uses. Previously only \$1,500 a year was required.

The governor, who is steering the state through a budget crisis after tax revenues fell off dramatically, and first lady Dawn Gibbons purchased the rural property for \$575,000 in August 2007.

They said they financed the purchase by trading other property they owned and using Gibbons' congressional pension and that they planned to build a home there when they retired. The governor has since filed for divorce.

Gibbons bought the land from former Washoe District Judge Jerry Carr Whitehead, who owns about 3,000 acres in Elko County.

Aguirre said Gibbons asked for the agricultural deferral a few weeks after buying the land, but the assessor didn't approve it.

"I told him I didn't think he would qualify," Aguirre said. "As is, he can't qualify."

After the governor's visit was followed by letters from a Nevada Tax Commission member, Aguirre said he did nothing, letting the deferral take effect by default for one year.

Aguirre said the case gnaws at him as he approaches retirement next month after 17 years in the elected position.

Given the purchase price, Aguirre said the property if designated for residential use would have an assessed value of \$201,250, with annual taxes of about \$5,000. Under the agricultural deferment, he said the value was slashed to \$1,620, and taxes reduced to \$15.

Aguirre said the property may have been part of a larger ranch, but it now must qualify for the agricultural deferment on its own.

One way to do that, according to the Elko County district attorney's office, is to show the owners received at least \$5,000 gross income from agricultural pursuits in a preceding year.

Aguirre said he told Gibbons last September, after the governor came to his office, that the property wouldn't qualify because it wasn't large enough to earn that much income.

Forty acres isn't a lot of ground for an animal that needs 800 pounds of forage a month, industry experts said. The Nevada Cattlemen's Association said one rule of thumb is 100 acres per cow if the land is mostly scrubby sagebrush, though less is needed if the land has higher quality feed and water.

Grazing land lease rates range from \$1.35 to \$20 per animal unit month, meaning that if Gibbons' 40 acres could support a cow, the going rate would be \$240 a year on the high end, about \$500 if it supported two cows.

A month after Aguirre told Gibbons that his property would not qualify, his office received an application for the agricultural assessment on Gibbons' behalf from John E. Marvel, an Elko attorney and member of the Nevada Tax Commission of which Gibbons is an ex-officio, nonvoting member. Marvel has served on the panel since 1990, and was last reappointed by former Gov. Kenny Guinn in 2005. Marvel is the son of longtime Assemblyman John W. Marvel, R-Battle Mountain.

"To me it seems odd that a member of the Tax Commission was involved," Aguirre said. "I did feel uncomfortable."

Kieckhefer rejected Aguirre's suggestion that Marvel's involvement was improper.

"There's absolutely zero relation between the assessment of this property and the Nevada Tax Commission," Kieckhefer said.

The commission oversees the Department of Taxation, setting regulations, enforcement and audit policies. It also hears taxpayer appeals of hearing decisions and is charged under law with ensuring taxes are applied consistently by assessors among taxpayers.

Marvel was retained by the governor, Kieckhefer said, because "he's the attorney who does this in Elko," and "because he's a damned good attorney."

Marvel did not respond to three phone calls by the AP to his office seeking comment.

In a letter accompanying Gibbons' application, Marvel said his clients "will be generating in excess of \$5,000 of gross income per year from agricultural use."

Aguirre wrote Marvel that he needed proof of the claimed income. He also said that to qualify, "half of the feed to maintain the livestock on the property" must come from that land.

On Dec. 26, Marvel submitted copies of the front side of two checks from Whitehead to Gibbons in the amounts of \$1,500 and \$4,227, with notations saying they were for 2007 lease payments, according to documents obtained by the AP. Aguirre said from the documentation provided he couldn't determine whether the checks had been cashed and he didn't feel comfortable questioning the governor or Marvel on that matter.

Whitehead, contacted by phone, declined to comment, saying it was a private matter.

Aguirre said before Gibbons' tax break became local coffee shop fodder, one or two people a year would apply for agricultural deferments. In the past few months, he's had about a dozen. "That's my main concern. To protect the legitimate people. The mom-and-pop people," Aguirre said.

Debate over tax breaks for so-called "hobby farmers" isn't new, and Assemblyman John Carpenter, R-Elko, said the governor's deferral could be used as an example of the need to review the law again during the 2009 Legislature.

"The law the way it's written is being abused, I don't think there's any question about it," Carpenter said. "The governor is not the first one to do it.

"I think the law needs to be rewritten to tighten it up."

Find this article at:

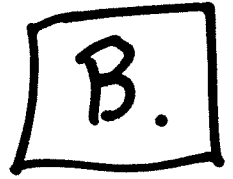
<http://www.lvrj.com/news/24623804.html>

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Gibbons' rural tax bill posted: amount doubles



The Associated Press

Mon, Jul 14, 2008 (4:33 p.m.)

The tax bill on Gov. Jim Gibbons' 40 acres in Lamoille was \$39.71 with an agricultural deferment _ more than double what was previously estimated, according to information posted Monday on the Elko County treasurer's office Web site.

The Associated Press reported last week that the first-term Republican governor saved thousands of dollars in taxes by getting the property designated as agricultural land rather than residential.

Elko County Assessor Joe Aguirre criticized the tax deferral that is designed to help farmers and ranchers and said his office felt pressured to approve it by Gibbons and a lawyer who also serves on the Nevada Tax Commission.

Gibbons spokesman Ben Kieckhefer defended the tax deferral as a legitimate assessment of grazing land and called any suggestion of intimidation "ridiculous."

The property had been part of bigger ranch, but once the governor bought it last year for \$575,000, it became a separate parcel and is required to qualify for the tax break on its own.

Aguirre questioned the \$5,700 Gibbons says he made in agricultural income off the land by leasing it out for grazing. Under Nevada law, the property must earn at least \$5,000 in gross agricultural income to qualify for the tax break.

Earlier, Aguirre estimated the governor's tax bill would drop from around \$5,000 to \$15.

Asked Monday about the discrepancy, Aguirre said, "It's still peanuts for that size of a piece of property and what was paid for it."

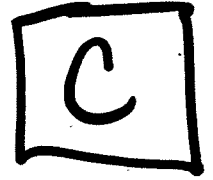
Nevada Land

Stunning yet affordable Nevada land Located on a deep mountain creek

Vida Land

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Public tax break, private leak?



Governor's ally suggests Dawn Gibbons revealed details of Elko land decision

By J. Patrick Coolican

Wed, Jul 16, 2008 (2 a.m.)

Gov. Jim Gibbons had hoped for a fresh start. After an inglorious 18 months in which his public approval sank below President Bush's, Gibbons shook up his senior staff and succeeded in avoiding tax hikes by prodding state legislators to make painful budget cuts. The governor seemed poised for a do-over.

But another damaging story has emerged, this one about a questionable tax break the governor received after putting pressure on a county tax assessor.

Now an ally of the governor's fears the story originated with first lady Dawn Gibbons, from whom the governor filed for divorce in May.

If true, this development would be a setback, politically and personally, as the Gibbonses had recently declared a truce in part to stanch the bad publicity.

First, the story: In 2007, Gibbons bought 40 acres of land for \$575,000 in Elko County with plans to build a retirement home. As the Associated Press reported last week, the elected Elko County assessor, Joe Aguirre, said Gibbons had placed him in an "awkward" and "uncomfortable position" when he asked him to characterize the land as agricultural rather than residential.

Doing so would reduce Gibbons' tax liability on the land from about \$5,000 to virtually nothing. If Gibbons used his position as governor for personal financial gain beyond his salary, he could be subject to an ethics complaint.

The tax break was created to help struggling ranchers and farmers.

Although Gibbons isn't using the land for agriculture himself, he leased the land back to the original owner, former District Judge Jerry Carr Whitehead, who reportedly left the bench while under federal investigation in 1996.

Whitehead uses the land for grazing. By law, the land must yield at least \$5,000 in revenue to be classified agricultural. Whitehead wrote checks totaling about \$5,700 to Gibbons in exchange for the land.

But Aguirre doubted the 40 acres was really worth what Whitehead was paying. In essence, he said, the land isn't truly producing \$5,000 in agricultural revenue, and the Whitehead payment was inflated so

that it crossed the threshold for the tax exemption.

Aguirre, a Republican, was interviewed on “Face to Face with Jon Ralston” on Tuesday and fleshed out some details. He said the governor visited him at his office in September and asked for the agriculture designation.

He refused, but then Gibbons hired John Marvel, a member of the state Tax Commission, to be his attorney in the matter.

“I felt like they backed me into a corner,” Aguirre told Ralston. If Gibbons wanted to appeal Aguirre’s decision, he wouldn’t do so at the state Tax Commission. He would go to the county and then to the state Board of Equalization.

Still, the state Tax Commission sets tax policy and rules on exemptions, and as such, has tremendous power over county assessors such as Aguirre.

Ben Kieckhefer, a spokesman for Gibbons, said, “The governor dropped into the assessor’s office about maintaining the agricultural deferral. As a property owner and taxpayer it seems appropriate. I think it’s reasonable that anyone would do the same.”

Kieckhefer also said Marvel is a respected attorney with experience in tax and land use issues in Elko County and so was a natural choice.

Robert Uithoven, Gibbons’ former campaign manager and an adviser, also defended the governor. Aguirre, he said, is “enjoying his 15 minutes” and “this idea he was intimidated into making the wrong decision, if that’s the case, he’s the wrong man for the job.”

Uithoven said it was up to Whitehead to determine the agricultural value of the land, not the county assessor.

Rural Nevadans, who constitute much of the remaining Gibbons base of support, are well versed in the agriculture tax break and are on guard against its abuse. An Elko Republican, who asked not to be named because he has business before state government, said rural residents are “extremely protective of the agricultural break because in some cases it’s the difference between success and failure. Anytime anybody tries to exploit it or abuse it, it puts the measure at risk.”

Steve Wark, a Republican operative, acknowledged on “Face to Face” that Gibbons’ latest problem looks bad, but he said the remaining pool of Gibbons’ supporters is so small it probably won’t matter much.

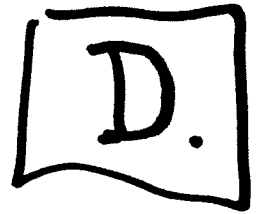
Here’s what should be of greater concern to Gibbons. One of his allies, who declined to be named discussing the governor’s divorce, said the tax break story likely originated with a leak from Dawn Gibbons or her divorce attorney, who would have access to the financial records — including the money from Whitehead.

The recent public truce between the Gibbonses hadn’t ended the sensational stories about Gibbons’ personal life, but the detente did seem to eliminate significant obstacles — accusations and recriminations — to finishing the divorce.

Now, though, “the truce is over,” the source said.

Dawn Gibbons’ attorney, Cal Dunlap, did not return a phone call from the Sun.

Elko Embarrassment No. 3 may be coup de grace



By Jon Ralston

Wed, Jul 16, 2008 (2:01 a.m.)

What happens in Elko doesn't stay in Elko for Jim Gibbons.

Three years ago, he unleashed a maniacal, frothing vituperation against liberals that was first noteworthy for its hyperventilating rhetoric and then infamous because it was pilfered from, of all people, an Alabama state auditor. Elko Embarrassment No. 1.

Two months ago, the Elko Daily Free Press, in a scathing and shocking editorial eventually heard around the state, took first lady Dawn Gibbons' side in an ugly divorce proceeding. Elko Embarrassment No. 2.

And now, beneath the beautiful Ruby Mountains, just outside Elko, Gibbons' questionable property tax break has become the latest in a seemingly endless series of spectacular attempts to continually lower the bar on gubernatorial competence and behavior. Elko Embarrassment No. 3.

Three embarrassments and you're out?

All this in the heart of Gibbons Country, where the governor defeated Dina Titus by almost a 3-1 margin in 2006 — does anyone think he could replicate those results today? And now the cows are coming home to graze — or are they? — in the one place where Gibbons thought he was politically invulnerable and the place where he plans to retire — perhaps sooner rather than later.

The story is relatively simple: On a 40-acre parcel Gibbons said he plans to retire to in Lamoille, the governor received a huge tax break — 99 percent — by getting it designated agricultural land. Joe Aguirre, the veteran Elko County assessor, a Republican, chafed at the tax break — both to Gibbons' face and in writing to his attorney — and in return for blowing the whistle has been ridiculed by the governor's office.

Indeed, during an interview Tuesday on "Face to Face," Aguirre said Gibbons asked for the tax break during a meeting in Elko and then hired an attorney, John E. Marvel, who sits on the state Tax Commission, which Aguirre said is the only panel in Nevada that has power over him and once took \$65,000 from the county in an adverse ruling. No wonder he felt, as he put it, "uncomfortable."

Ordinarily, at this point, I would say the state's highest elected official has earned the benefit of the doubt, that perhaps he was entitled to the tax break from \$5,000 down to \$40, that maybe the county assessor was just being obstreperous.

But Jim Gibbons is no ordinary governor and his tenure has earned him the benefit of being doubted every time he speaks. Aguirre, assessor for 17 years, is totally credible and Gibbons, governor for too long already, is, well, not.

What Aguirre is saying can be distilled to this: He told Gibbons, who approached him last year during the Elko County Fair, that the property did not qualify. He was then surprised to hear from Marvel, whose appointed position immediately made him feel pressured. And Aguirre says the governor fudged facts about the land to obtain an exemption that such a piece of property usually could not come close to qualifying for.

Or, as he put it, "I felt like they backed me into a corner. They knew exactly what to give me for evidence to qualify this property. I guess my choices were to call him a liar or let them go through."

Call Jim Gibbons — the man who dissembled about a secret swearing-in ceremony as his first gubernatorial act, and followed that up with all manner of dissimulations about his professional and personal conduct — a liar? Perish the thought.

Aguirre said on the program he was so skeptical of the evidence Marvel provided him that he has determined Gibbons must annually requalify the land to continue to receive the exemption. It's clear that after a long tenure in government, Aguirre thinks the highest elected official in the state has compromised the integrity of the tax process.

And for what?

A man who has slashed a billion dollars from the state budget in a haphazard, unimaginative, blundering way has been caught over an attempt to save a few thousand dollars on his property taxes? I wonder how people struggling to make ends meet during this economic downturn, made worse by Gibbons' mindless cuts, feel when they read the governor may have used the power of his office to receive — what does the Ethics Commission call it? — an unwarranted benefit.

Maybe nothing will come of this, maybe it will simply be absorbed into the large reservoir of gaffes and prevarications that have characterized The Gibbons Era. But if this latest scandal finally undoes Jim Gibbons, it will be somehow fitting that what began in Elko, the heart of Gibbons Country, ends in Elko.

Nevada Land

Stunning yet affordable Nevada land Located on a deep mountain creek

V Verty Owners

Ads by Google

Discussion: 5 comments so far...

By texexnv

7/16/08 at 8:08 a.m.

Suggest removal

Since Aguirre didn't go to the trouble of seeing if the checks had been cashed or were bogus by viewing the back of the checks.....a GREAT deal could come of this yet.

Namely that Gibbons and Whitehead conspired to defraud the State of Nevada in a tax evasion scheme that was nothing more than a different way for Whitehead to make political contributions to his buddy.

But it would take an AG with gonads and political aspirations to see this quite glaring factoid. Ahem....

By Judy

7/16/08 at 9:25 a.m.

Suggest removal

Cashing the checks is one thing - there should be a trail. Bet they were never cashed

EXHIBIT 2

R E C E I V E D

JUL 21 2008

COMMISSION
ON ETHICS

**Grant, Bargain and Sale Deed, Legal Description, State
of Nevada Declaration of Value, and Sales Data
Regarding the Purchase of Real property by Jim
Gibbons from Jerry Carr Whitehead in August, 2007.**

DOC # 579379
08/08/2007 12:18 PM

Official Record

Requested By
STEWART TITLE

Elko County - NV

Jerry D. Royemide - Recorder

Page 1 of 3 Fee: \$16.00
Recorded By: NR RPTT: \$2,242.50



Grantees' address:
Governor James A. Gibbons
101 North Carson Street
Carson City, NV 89701
Mail tax statements to:
Governor James A. Gibbons
101 North Carson Street
Carson City, NV 89701
APN: 007-080-025
07210800

GRANT, BARGAIN AND SALE DEED

THIS INDENTURE is made and entered into this 2nd day of August, 2007, by and between **JERRY CARR WHITEHEAD**, an unmarried man, "Grantor"; and **JAMES A. GIBBONS** and **T. DAWN GIBBONS**, Trustees of **THE GIBBONS FAMILY 1989 TRUST** dated August 21, 1989, "Grantees";

WITNESSETH:

That the said Grantor, for good and valuable consideration given by the Grantee, the receipt of which is hereby acknowledged, does by these presents grant, bargain, sell, and convey unto the said Grantees, and to their successors and assigns, all that certain property situate, lying and being in the County of Elko, State of Nevada, more particularly described on Exhibit "A" attached hereto, made a part hereof and incorporated herein by this reference.

SUBJECT TO any and all exceptions, reservations, restrictions, restrictive covenants, assessments, easements, rights, and rights of way of record.

TOGETHER WITH any and all buildings, fixtures and improvements situate thereon.

TOGETHER WITH the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

TO HAVE AND TO HOLD the said premises, together with the appurtenances, unto the said Grantees, and to their successors and assigns.

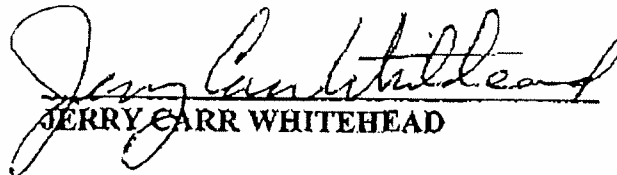
IN WITNESS WHEREOF, the said Grantor has executed this Deed as of the day and year first hereinabove written.



579379

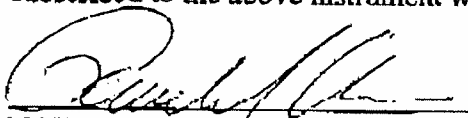
08/01/2007
002 of 3

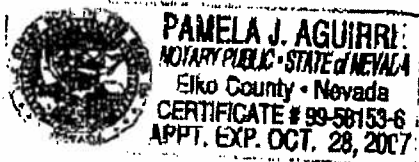
GRANTOR:


JERRY CARR WHITEHEAD

STATE OF NEVADA)
COUNTY OF Elko)SS.

On Aug 2nd 2007, 2007, personally appeared before me, a Notary Public, **JERRY CARR WHITEHEAD**, personally known to me or proven to me to be the person whose name is subscribed to the above instrument who acknowledged that he executed said instrument.


NOTARY PUBLIC





679379

08/08/2007
089 of 3

LEGAL DESCRIPTION

The land referred to herein is situated in the State of Nevada, County of ELKO, described as follows:

Parcel A as shown on that certain Parcel Map for Jerry Carr Whitehead filed in the office of the County Recorder of Elko County, State of Nevada, on July 18, 2007, as File No. 577704, being a portion of Sections 9 and 16, Township 33 North, Range 58 East, M.D.B.&M..

EXCEPTING THEREFROM a one-half (1/2) interest in all gas, oil, petroleum and minerals as reserved in Deed executed by ERWIN W. VAUGHAN, et ux, et al, recorded March 16, 1960, in Book 2, Page 173, Official Records, Elko County, Nevada.

STATE OF NEVADA DECLARATION OF VALUE

DOC # DV -

579379

04/04/2007

02:18 PM

Official Record

Requested By
STEWART TITLE

1. Assessor Parcel Number(s):
a) 007-080-025 (Portion of)
b) _____
c) _____
d) _____

FOR RE

Document

Book: _____

Date of R. _____

Notes: _____

Elko County - NV

Jerry D. Reynolds - Recorder

Page 1 of 1 Fee: \$16.80
Recorded By: NH APTT: \$2,242.50

2. Type of Property:
a) _____ Vacant Land b) _____ Single Family Res.
c) _____ Condo/Townhouse d) _____ 2-4 Plex
e) _____ Apartment Bldg. f) _____ Comm'l/Ind'l
g) XX Agricultural h) _____ Mobile Home
i) Other: _____

3. Total Value/Sales Price of Property \$ 575,000.00

Deed in Lieu of Foreclosure Only (Value of Property) \$ _____

Transfer Tax Value \$ 575,000.00

Real Property Transfer Tax Due: \$ 2242.50

4. If Exemption Claimed:

a. Transfer Tax Exemption, per NRS 375.090, Section: _____

b. Explain Reason for Exemption: _____

5. Partial Interest: Percentage being transferred: 100 %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the disallowance of any claimed exemption or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed

Signature: Jerry Carr Whitehead Capacity: Buyer

Signature: James A. Gibbons Capacity: Buyer

SELLER (GRANTOR) INFORMATION (required)

BUYER (GRANTEE) INFORMATION (required)

Print Name: Jerry Carr Whitehead
Address: 7121 Lakeside Drive, Suite 200
City/State/Zip: Reno, NV 89511

Print Name: James A. Gibbons, Trustee
Address: 101 North Carson Street
City/State/Zip: Carson City, NV 89701

COMPANY/PERSON REQUESTING RECORDING (required if not the Seller or Buyer)

Company Name: STEWART TITLE OF NEVADA-NORTHEASTERN DEVELOPMENT
Address: 810 Idaho Street
City/State/Zip: Elko, Nevada 89801

(AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED)

Document # 579379

Verify
Non-sale Record

Book 000
Page 000

Legal Owner GIBBONS, JAMES A & T DAWN TR
Assessed Owner GIBBONS, JAMES A & T DAWN TR

Mailing Address 101 N CARSON ST
CARSON CITY NV 89701-3713

Property Location TWP 33N RGE 58E MDB&M
Subdivision PARCELA

Block/Lot /
Class .00
Tax District 2.0
Land Use Code 100

Zoning Code G
Re-appraisal Group

Total Acres 40.000
Water-Righted Acres .000
Land Square Feet 0
Building Sq Feet 0
of Bedrooms 0

Improvement Type
Special Property Code
Orig Constr Year
Weighted Year
of Bathrooms .00

Assessed Values
Land & Ag Land 1.565
Improvements 0
Personal Property 0
Total 1.565

Grantee/Buyer GIBBONS, JAMES A & T DAWN TR
Grantor/Seller WHITEHEAD, JERRY CARR

Real Prop Transfer Tax 2,242.00
Interest Rate .00

Date Sold 08/08/07
Total Sale Price 575,000.00
Deed of Trust 1 .00
Deed of Trust 2 .00
Deed of Trust 3 .00
Cash Amount 575,000.00

Sales Code

Price Adjustment .00
Adjusted Sale Price 575,000.00

Price Adjustment Remark

RECEIVED

JUL 21 2008

COMMISSION
ON ETHICS

EXHIBIT 3

**Jim Gibbons' Application for Agricultural
Use Assessment**

WHEN RECORDED MAIL TO _____

Marvel & Kump217 Idaho StreetElko, NV 89801

APPLICATION FOR AGRICULTURAL USE ASSESSMENT

THIS PROPERTY MAY BE SUBJECT TO LIENS
FOR UNDETERMINED AMOUNTS

James A. Gibbons and T. Dawn Gibbons,
Trustees of the Gibbons Family 1989

Pursuant to Nevada Revised Statutes, Chapter 361A I/We, Trust dated August 21, 1989
(Please print or type the name of each owner of record or his representative) Hereby make application to
granted, on the below described agricultural land, and assessment based upon the agricultural use of this land.

I/We understand that if this application is
approved, it will be recorded and become a public
record. This agricultural land consists of 40
acres, is located in Elko County,
Nevada, and is described as:
Assessor's Parcel # 007-080-025

Legal Description: See Exhibit A

I/We have owned the land since August 8, 2007

I/We certify that the gross income from agricultural
use of the land during the preceding calendar year
was \$5,000 or more. Yes X No _____

If yes, attach proof of income.

I/We have used it for agricultural purposes since Acquisition

The agricultural use of the land presently is (i.e.,
grazing, pasture, cultivated, dairy, etc.) Grazing
and pasture

Was the property previously assessed as agricultural? -
YES If so, when? Has historically
been in agricultural use.

I/We hereby certify that the foregoing information submitted is true, accurate and complete to the best
of my/our knowledge. I/We understand that if this application is approved, this property may be subject
to liens for undetermined amounts. I/We understand that if any portion of this land is converted to a
higher use, it is our responsibility to notify the Assessor in writing with 30 days. Each owner of
record or his authorized representative must sign. Representative must indicate for whom he is signing, in
what capacity and under what authority.

John E. Marvel
Signature Application or Agent

JOHN E. MARVEL
Printed Name Application or Agent

217 Idaho St.
Address

Elko, NV 89801
City, State Zip

(775) 738-9881
Phone

10/18/07
Date

Signature Application or Agent

Address

Phone

Printed Name Application or Agent

City, State Zip

Date



LEGAL DESCRIPTION

The land referred to herein is situated in the State of Nevada, County of ELKO, described as follows:

Parcel A as shown on that certain Parcel Map for Jerry Carr Whitehead filed in the office of the County Recorder of Elko County, State of Nevada, on July 18, 2007, as File No. 577704, being a portion of Sections 9 and 16, Township 33 North, Range 58 East, M.D.B.&M..

EXCEPTING THEREFROM a one-half (1/2) interest in all gas, oil, petroleum and minerals as reserved in Deed executed by ERWIN W. VAUGHAN, et ux, et al, recorded March 16, 1960, in Book 2, Page 173, Official Records, Elko County, Nevada.

R E C E I V E D

JUL 21 2008

COMMISSION
ON ETHICS

EXHIBIT 4

**Letter of John E. Marvel to Joe Aguirre,
October 23, 2007**

MARVEL & KUMP, LTD.

ATTORNEYS AT LAW
217 Idaho Street
P. O. Box 2645
Elko, NV 89803

John E. Marvel, Esq.
(775) 738-9881

Jeffrey J. Kump, Esq.
(775) 777-1204
Facsimile (775) 738-0187

October 23, 2007

Joe Aguirre
Elko County Assessor
PO Box 8
Elko, NV 89803

Re: Gibbons-Application for Agricultural Use Assessment

Dear Joe:

Enclosed herewith, please find an Application for Agricultural Use Assessment being filed on behalf of Governor and Mrs. Jim Gibbons. My clients intend to continue to use the subject property for agricultural purposes and will be generating in excess of \$5,000.00 of gross income per year from agricultural uses.

Thank you for your attention to this matter.

Very truly yours,


JOHN E. MARVEL

JEM/dh

cc: Governor and Mrs. Gibbons

R E C E I V E D

JUL 21 2008

COMMISSION
ON ETHICS

EXHIBIT 5

**Letter of Joe Aguirre to John Marvel,
October 24, 2007**



Elko County Assessor

P.O. Box 8, Elko, Nv 89803
Elko County Courthouse Annex
(775) 738-5217 PH (775) 778-6795 FAX
www.elkocountynv.net

Joe Aguirre
Assessor

Katrinka S. Russell
Deputy Assessor

October 24, 2007

John Marvel
PO Box 2645
Elko, Nevada 89803

John,

I received your letter and application today on behalf of the Gibbons Family Trust. As submitted, it does not meet the qualifications for approval. We will need the proof of income that is required to be attached to the application for that piece of property. As you know this parcel came out of a larger operation and it will be necessary to prove that it meets the requirements as prescribed by Statute. This piece will now need to stand alone on its own. It is also required that half of the feed to maintain the livestock on the property come from it.

Thank you for your time and consideration in this matter, and if you have any questions in regards to this letter, please feel free to let me know.

Sincerely,

Joe Aguirre
Elko County Assessor

R E C E I V E D

JUL 21 2008

COMMISSION
ON ETHICS

EXHIBIT 6

**Letter of John E. Marvel to Joe Aguirre,
December 26, 2007, with Copies of Checks from
Jerry Carr Whitehead to Jim Gibbons for
\$1,500.00 and \$4,227.33.**

MARVEL & KUMP, LTD.

ATTORNEYS AT LAW

217 Idaho Street

P. O. Box 2645

Elko, NV 89803

John E. Marvel, Esq.
(775) 738-9881

Jeffrey J. Kump, Esq.
(775) 777-1204
Facsimile (775) 738-0187

December 26, 2007

Elko County Assessor
Attn: Joe Aguirre
P.O. Box 8
Elko, NV 89803

RE: Gibbons Family Trust ~ Agricultural Use Assessment Application

Dear Joe,

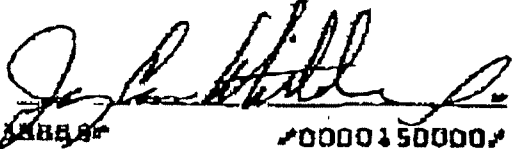
In reference to your letter of October 24, 2007, please find enclosed herewith copies of two checks payable to James A. Gibbons, a trustee of the Gibbons Family Trust, which checks total a sum of \$5,727.33. These checks are provided as verification of annual gross income received by the Gibbons Family Trust for agricultural purposes to substantiate its qualification for the entitlement to an agricultural use assessment.

If you have any questions concerning the foregoing, please do not hesitate to contact me. Thank you for your attention to this matter.

Very truly yours,


JOHN E. MARVEL

JEM/ji
Enclosure

| | | | | |
|--|--|--|--|------------------|
| JERRY GARR WHITEHEAD 6121 LAKEVIEW DR. SUITE 200 RENO, NV 89511 775.779.8800-7700 | | WELLS FARGO BANK, N.A. RENO, NV 89502 84-7074-8200 | | 7298 |
| PAY TO THE ORDER OF <u>James A. Gibbons</u> | | \$ <u>441,500.00</u> | | <u>8/14/2007</u> |
| One Thousand Four Hundred and One/100 | | | | DOLLARS |
| James A. Gibbons 101 North Carson Street Carson City, Nevada 89701 | |  | | |
| 2007 - 2008 | | #007298# 63212707420001078888# | | #0000150000# |

REF#8810305388 CK#

7298

1500.00

JERRY CARR WHITEHEAD

PAID TO THE
ORDER OF

James A. Gibbons

James A. Gibbons
101 North Carson Street
Carson City, Nevada 89701

MEMO

Final 2007 lease payment

⑈007115⑈ ⑈321290712⑈0010738887⑈

Security Features

JERRY CARR WHITEHEAD
DBA THORPE CREEK RANCHES
James A. Gibbons

7415

Final 2007 lease payment

12/6/2007

4,227.33

Checking

Final 2007 lease payment

4,227.33

R E C E I V E D

JUL 21 2008

COMMISSION
ON ETHICS

EXHIBIT 7

**Secured Tax Inquiry Detail for
Jim Gibbons' Property**



Only With

Elko County, Nevada

Growth... Tradition... Belief

[Treasurer Home](#)

[Assessor Data Inquiry](#)

[Back to Last Page](#)

Secured Tax Inquiry Detail for Parcel # 007-080-129

Property Location: TWP 33N RGE 58E MDB&M
Billed to: GIBBONS, JAMES A & T DAWN TR
101 N CARSON ST
CARSON CITY NV 89701-3713

Roll #: 012748
Tax Year: 2009
District: 2.0
Tax Service:
Land Use Code: 600

Outstanding Taxes:

| Prior Year | Tax Penalty/Interest | Total | Amount Paid | Total Due |
|------------|----------------------|-------|-------------|-----------|
|------------|----------------------|-------|-------------|-----------|

No Prior Year Taxes

Current Year

| | | | | |
|-------|-------|-------|-----|--------------|
| 08/18 | 39.71 | 39.71 | .00 | 39.71 <--Pay |
| 10/06 | | | | |
| 01/05 | | | | |
| 03/02 | | | | |

[Payment Cart](#)

[History](#)